

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC., a Delaware corporation,
Plaintiff,

v.

JOSHUA FISHER, JACOB W. MAHURON
A/K/A “PRAGMATIC TAX,” MATTHEW
ABBOTT A/K/A “NOVA,” JOSE
DEJESUS AKA “DAVID HASTINGS”
A/K/A “J3STER,” TRAVERS RUTTEN
A/K/A “TRAVERS7134,” JESSE
WATSON A/K/A “JESSEWATSON3944,”
JOHN DOE NO. 1 A/K/A “CALC”,
ANDREW THORPE A/K/A “CYPHER,”
RYAN POWER AKA “KHALEESI,” JOHN
DOE NO. 4 A/K/A “GOD,” JOHN DOE
NO. 5 A/K/A “C52YOU,” JOHN DOE NO.
6 A/K/A “LELABOWERS74,” JOHN DOE
NO. 7 A/K/A “FRAMEWORK,” KICHING
KANG A/K/A “SEQUEL,” JOHN DOE
NO. 9 A/K/A “1NVITUS,” DAVID
BRINLEE A/K/A “SINISTER,” JOHN DOE
NO. 11 A/K/A “THEGUY,” JOHN DOE
NO. 12 A/K/A “BEATRED,” JOHN DOE
NO. 13 A/K/A “COMMUNITYMODS,”
JOHN DOE NO. 14 A/K/A “PALACE,”
JOHN DOE NO. 15 A/K/A
“VINCENTPRICE,” JOHN DOE NO. 16
A/K/A “ESSWAN,” JOHN DOE NO.
17 A/K/A “ADMIRAL,” JOHN DOE NO. 18
A/K/A “TOMDICKHARRY,” JOHN DOE
NO. 19 A/K/A “ROB,” JOHN DOE NO. 20
A/K/A “STAYLOCKED,” JOHN DOE NO.

Case No. 2:23-cv-01143-MLP

PLAINTIFF BUNGIE, INC.’S *EX PARTE*
SIXTH MOTION FOR AN EXTENSION OF
THE SERVICE DEADLINE UNDER
RULE 4(m)

NOTE ON MOTION CALENDAR:
February 10, 2025

21 A/K/A “FIVE-STAR,” JOHN DOE NO.
 22 A/K/A “HORROR,” JOHN DOE NO. 23
 A/K/A ELITECHEATZ.CO, JOHN DOE
 NO. 24 A/K/A MIHAI LUCIAN, JOHN
 DOE NO. 25 A/K/A NATHAN BERNARD,
 A/K/A “DOVE,” JOHN DOE NO. 26
 A/K/A “BLACKMAMBA,” JOHN DOE
 NO. 27 A/K/A “BILLNYE,” JOHN DOE
 NO. 28 A/K/A “BANEK192,” JOHN DOE
 NO. 29 A/K/A SHOPPY ECOMMERCE
 LTD, JOHN DOE NO. 30 A/K/A/ FINN
 GRIMPE A/K/A “FINNDEV,” AND JOHN
 DOES NO. 31-50,
 Defendants.

Plaintiff Bungie, Inc. hereby moves for an additional 90-day extension to the Rule 4(m) deadline to permit Bungie to complete the process of identifying, locating, and then serving any remaining U.S. Defendants.

I. INTRODUCTION

Bungie is the owner and developer of the massive multiplayer online video game shooter *Destiny 2*. Defendants develop, sell, market, and support cheat software targeted to attack *Destiny 2*. *See generally* Dkt. 54. Recognizing that Defendants have deliberately obscured their identities, the Court granted Bungie’s requests for third party discovery on November 29, 2023, April 24, 2024, and September 16, 2024. *See* Dkts. 27, 51, 68. Bungie has served every subpoena permitted under those Orders. Additionally, Bungie amended its complaint to encompass what it had discovered. *See* Dkts. 53, 54.

Via third-party discovery, Bungie has aggressively pursued efforts to complete the process of identifying, locating, and serving the Defendants. Its most recent efforts have born tremendous fruit, but, due to the holidays, delays in getting all of the remaining productions, an inadvertent delay from a process server, and needing to send follow-up subpoenas as permitted by the September 16th Order, not all productions have been returned. *See generally* Declaration of Dylan Schmeyer ¶¶ 4-7.

Bungie, having not received Rule 4 waiver acceptances back from the Defendants it has

1 identified, has served all identified U.S. Defendants. It also has begun the process of serving
2 Defendants located outside the United States, either through Hague service or alternative service.
3 Bungie is finalizing its list of Defendants for whom Hague and alternative service will be
4 necessary, and as soon as it can make its final identifications, that motion can be completed and
5 filed. *Id.* at ¶ 12.

6 Bungie has only obtained half of the productions for its final round of
7 subpoenas – various incidents have conspired to delay their receipt. *Id.* at ¶¶ 5, 6, 12-13. Bungie
8 needs these productions, and a brief period to analyze them, in order to (1) potentially identify
9 any remaining U.S. Defendants who remain anonymous and (2) ensure that its forthcoming
10 alternative service request only encompasses Defendants it cannot serve by traditional means.

11 Bungie is cognizant of the long and sometimes winding road its investigation has taken,
12 but it has made tremendous progress, particularly given the efforts Defendants have undertaken
13 to mask their identities and locations. Bungie is seeking an extension of 90 days from the
14 issuance of the Court’s Order on this Motion so that the work it began in November 2023 (and
15 before) can be completed.

16 **II. FACTUAL BACKGROUND**

17 On October 27, 2023, Bungie filed a motion seeking third-party discovery to unmask
18 anonymous defendants for service of process. Dkt. 24. The Court granted that motion in part on
19 November 29, 2023. Dkt. 27. Eighteen subpoenas were served under that Order. Dkt. 29 at ¶ 10.
20 On April 9, 2024, Bungie filed a second motion seeking further third-party discovery, which the
21 Court granted on April 24th. *See* Dkts. 40, 51. Six subpoenas were served under that Order.
22 Schmeier Declaration ¶¶ 4, 7. Bungie filed a third motion seeking a final round of third-party
23 discovery on August 23rd, which was granted on September 16th. Dkts. 58, 68. Six subpoenas
24 were eventually served under that Order, although due to an inadvertent error by the process
25 server, three subpoenas were served much later than anticipated, and a follow-up subpoena had
26 to be served per the production from Payward. Schmeier Declaration ¶¶ 5-7. Bungie’s analysis
27 of the Payward subpoena production, and thus Bungie’s ability to identify its follow-up needs,

1 was substantially delayed by the now withdrawn motion to quash (*see* Dkts. 77, 95), which
2 caused Payward to withhold the production until resolution. Schmeyer Declaration ¶ 6. Bungie
3 will need additional time to obtain and analyze these extant productions to complete its efforts to
4 identify and locate the remaining Defendants. *Id.* at ¶¶ 12-13.

5 Bungie sent Rule 4 waiver requests to all named Defendants it has identified and pinned
6 to a domicile, and one it has identified with reliable communication methods, with its Amended
7 Complaint. *Id.* at ¶ 8. Bungie received only two favorable responses. *Id.* Therefore, Bungie has
8 moved forward with serving all U.S. Defendants whom it has identified and who have not agreed
9 to waive service. *Id.* at ¶ 9. One of those Defendants has since defaulted. Dkt. 98. Another has
10 been dismissed. Dkt. 100.

11 Bungie wishes to formally serve everyone it can, thereby focusing its forthcoming
12 alternative service request only on Defendants that Bungie’s investigation and third-party
13 discovery cannot identify and locate. As such, Bungie needs the final third-party productions to
14 finalize its list of Defendants who cannot be served by traditional means and to confirm whether
15 there are any more U.S. Defendants unknown to it. Bungie has made steady progress with
16 identification and service to this juncture. Schmeyer Declaration ¶¶ 8-11. But Bungie requires
17 more time to secure, analyze, and finalize its investigation so that it may finalize its alternative
18 service needs and amend the complaint with any newly identified Doe defendants. *Id.* at ¶ 13.

19 Bungie therefore submits that there is good cause to extend the Rule 4(m) deadline,
20 currently set at February 16th, by a further 90 days to allow the final third-party discovery
21 Bungie is awaiting to reach its conclusion, and thereby allow Bungie to finalize its forthcoming
22 alternative service requests. All known U.S. Defendants have been served by the time of this
23 filing – this extension to the Rule 4(m) deadline is thus only for those unidentified Defendants
24 who may yet turn out yet to be located in the U.S.

25 **III. LEGAL ARGUMENT**

26 Under Rule 4(m), a court “must extend the time for service for an appropriate period”
27 where the plaintiff shows good cause for an inability to serve a defendant within 90 days of filing

the complaint. FED. R. CIV. P. 4(m). *See also Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007) (“Rule 4(m) . . . requires a district court to grant an extension of time when the plaintiff shows good cause for the delay.”) (emphasis omitted). A showing of good cause may involve various factors, such as the lack of prejudice to defendant and the significant prejudice to plaintiff if the extension were not granted and the complaint was dismissed, and the defendant’s receipt of actual notice of the lawsuit. *See, e.g., Efaw*, 473 F.3d at 1041; *Madrid v. Adkins*, No. C19-1710 JLR-TLF, 2020 U.S. Dist. LEXIS 173154, *6, 8 (W.D. Wash. Aug. 20, 2020), *report & recommendation adopted by* 2020 U.S. Dist. LEXIS 186681 (W.D. Wash. Oct. 6, 2020); *Hoefler v. Apple Wash. LLC*, No. C17-1369 RAJ, 2018 U.S. Dist. LEXIS 216863, *5-6 (W.D. Wash. Dec. 27, 2018). Upon a showing of good cause for the lack of service, the district court must extend the time period for service. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001). Even absent a showing of good cause, the court still has discretion to extend the time period. *Id.* (citing *Petrucelli v. Bohringer & Ratzinger, GMBH*, 46 F.3d 1298, 1305 (3d Cir.1995)).

The Ninth Circuit has also concluded that Rule 4’s timing requirement for service is “inapplicable to service in a foreign country[.]” *Lucas v. Natoli*, 936 F.2d 432 (9th Cir. 1991) (per curiam). Thus, where it appears defendants may need to be served in foreign countries, the time limit for service in Rule 4(m) does not apply. *Amazon.com Inc. v. Awns*, No. C22-402-MLP, 2022 U.S. Dist. LEXIS 185807, *2 (W.D. Wash. Oct. 11, 2022). However, “[d]espite the lack of an express time limit, Rule 4(m) does not preclude the court from setting a reasonable time limit for service in a foreign country to properly manage a civil case.” *Id.* (internal quotation marks omitted).

Bungie requires the last productions to determine which of the remaining unidentified Defendants are U.S. residents and which are domiciled abroad. Dkt. 56 at ¶ 4. Bungie formally served all of the U.S. Defendants it has been able to locate and has had one Rule 4 waiver returned. Dkt. 99; Schmeier Declaration ¶ 8. To the extent that any of the remaining unidentified Defendants are residents of a foreign country, Bungie will pursue serving them, once they are identified, in the same manner as it is pursuing foreign Defendants it has already identified and

1 located. *Id.*

2 Bungle has good cause for having not yet served any remaining U.S. Defendants:
3 Namely, that Bungle doesn't know who they are yet, whether they are in fact in the United States
4 or a foreign country, the address of their primary residence, or other information sufficient to
5 affect service. Although Bungle has issued three waves of subpoenas to third parties to identify,
6 locate and affect service on the unidentified Defendants, some remain unidentified.¹ Bungle is
7 working on following its final leads via the productions from the final subpoenas, which
8 necessarily entails working with third parties and the delays inherent in that process. More time
9 is therefore needed to identify and serve these unidentified Defendants, whether they are foreign
10 or domestic.

11 There is no undue prejudice to the unidentified Defendants if such an extension were
12 granted. The extension is necessary to allow time for Bungle to (1) either identify Defendants so
13 they may be served or exhaust its efforts to do so, and (2) move for alternative service of the
14 identified Defendants that Bungle is ultimately unable to obtain a physical address for. Bungle,
15 on the other hand, would be significantly prejudiced, as the unidentified Defendants could
16 continue their tortious conduct (and potentially add new or additional layers of anonymity to
17 avoid identification) while Bungle continued to identify them, functionally rewarding them for
18 obfuscating their identities. This delay would not negatively impact the orderly progress of the
19 case. The request is solely to allow Bungle time to complete its efforts to identify and locate the
20 remaining unidentified Defendants, or so it can determine which Defendants it will need to seek
21 alternative service for. Further, the reason for the delay is largely, if not entirely, out of Bungle's
22 control. Any delay is due in significant part to the Defendants' ongoing attempts to conceal their
23 identities. *See, e.g.*, Dkt. 25 at ¶¶ 2-13. The potential but heretofore unknown foreign residence
24 of many unidentified Defendants has further complicated and delayed efforts to identify, locate,
25

26 ¹ Since filing its Amended Complaint, Bungle has been successful in identifying and locating
27 some of the Doe Defendants and has requested issuance of summons to serve those Defendants.
See Dkts. 61-64, 71-72.

1 and serve them. Finally, Bungie has acted diligently and in good faith in promptly pursuing
2 multiple avenues of discovery and investigation – including via 31 subpoenas – to identify,
3 name, and serve Defendants. *See, e.g., Vanleeuwen v. Keyuan Petrochemicals, Inc.*, No. CV 11-
4 9495 PSG (JCGx), 2013 U.S. Dist. LEXIS 121976, *13-14 (C.D. Cal. Aug. 26, 2013) (difficulty
5 in locating defendant and plaintiffs’ attempts to locate defendant through discovery supported the
6 conclusion that plaintiffs acted in good faith). Bungie’s filing of requests for summons, a request
7 for entry of default, proofs of service and Rule 4 waivers, and voluntary dismissals is indicative
8 of its continuing progress in its investigation and this case. Bungie is making good use of all the
9 time the Court grants it.

10 If the Court concludes that this is not good cause requiring an extension under the
11 mandatory language of Rule 4(m), it should still exercise its discretion and grant the extension in
12 the interest of judicial efficiency. Bungie has invested considerable time and resources into
13 determining the obfuscated identities of the Defendants, to considerable success – Bungie has
14 identified a significant number. *See* Schmeyster Declaration ¶ 8. Bungie has actively pursued the
15 permitted third-party discovery and is merely awaiting the remaining productions from the final
16 subpoenas to make final decisions as to service. These productions will allow it to either identify
17 and locate the unidentified Defendants for traditional service or to crystalize its alternative
18 service needs. Absent a grant of more time, it is conceivable that additional U.S. Defendants
19 could be dismissed from this suit, without prejudice, for lack of service. Bungie’s efforts to
20 identify them would not cease, however, and once they were identified, Bungie would sue them
21 again once their names and addresses were discovered. Allowing more time for Bungie to
22 complete the limited third-party discovery it has sought now, so this can be accomplished on a
23 reasonable timeline without these additional steps, is the most efficient path.

24 IV. CONCLUSION

25 Bungie therefore respectfully requests that the Court extend Bungie’s deadline to serve
26 the remaining U.S. Defendants by 90 days from the date of the order on this Motion.

27 //

1 Dated this 10th day of February, 2025.

Respectfully submitted,

2 KAMERMAN, UNCYK, SONIKER &
3 KLEIN, P.C.

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8 *Attorneys for Plaintiff Bungie, Inc.*

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10 **WORD LIMIT CERTIFICATION**

11 I certify that this memorandum contains 2,082 words, in compliance with the Local Civil
12 Rules.

13 By: s/ Stacia N. Lay

14 Stacia N. Lay, WSBA #30594